

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WITOLD BAGINSKI,

Plaintiff,

v.

BOROUGH OF WALLINGTON;
EUGENIUSZ RACHELSKI, individually
and in his official capacity as Councilman;
KHALDON ANDROWIS individually and
in his official capacity as Councilman;
MELISSA DABAL, individually and in her
official capacity as Councilwoman; BRYAN
OLKOWSKI, individually and in his official
capacity as Councilman; VICTOR POLCE,
individually and in his official capacity as
Borough Administrator, XYZ CORP. INC.
(1— 10); JOHN DOES (1-10) AND JANE
DOES (1- 10),

Defendants

CASE NO: 2:17-cv-05320 (JLL) (JAD)

Civil Action

**CERTIFICATION OF
DOUGLAS NEUMETZGER**

I, Douglas Neumetzger, hereby certify as follows:

1. I am the President of DART Computer Services, Inc. (“DART”).
2. DART is the information technology consultant and computer systems administrator for the Borough of Wallington (the “Borough”).
3. DART is responsible for providing information technology and systems administration services to the Borough. As such, I am fully familiar with the facts set forth herein. If asked to testify in this matter, I would do so in a manner consistent with this Certification.
4. Plaintiff, Witold Baginski (“Baginski”), used two email addresses in connection with his employment with the Borough in the capacity as its Clerk and/or Business

Administrator, “v.baginski@verizon.net” (the “Verizon[dot]net email”) and “wbaginski@wallington.org.” (the “Wallington[dot]org email”).

5. In addition to the Verizon[dot]net email, other Borough officials and employees have used other “Verizon” email addresses to conduct business on the behalf of the Borough. These include: “wallington.acctspayable@verizon.net” used by Agnes Brynczka, a clerk/typist employed by the Borough; “wallington.health@verizon.net” used by Paula Gilbert, the Borough Registrar with its Board of Health; and “wallington.boro@verizon.net” used by Charles Cucci, the Borough’s Chief Financial Officer.

6. The Borough mains internet access through Verizon FiOS. Per the State franchise agreement, Verizon provides each municipal facility with a no-cost internet connection. A certain number of email accounts were part of that service. It is my understanding that Plaintiff’s Verizon[dot]net address was one of those along with the other Verizon addresses set forth above.

7. With respect to the Verizon[dot]net account, Baginski sent and received messages to and from this account using Microsoft Outlook, an email client program, installed on the Borough’s computer assigned to him. The Borough is owner of that computer and the licensee of the Outlook email client program installed on it. Email messages to and from that email client passed through the Borough’s fileserver, computer hardware also owned by the Borough and located in the Borough Hall. The Borough’s computer provided to Baginski was configured to store those emails in an Outlook data file (in PST format) on the Borough’s fileserver rather than on the computer provided to Baginski.

8. In November of 2018, DART was provided with a copy of a litigation hold letter issued by Baginski’s attorney. Counsel for the Borough, Debra McGarvey, Esq., instructed DART to ensure that the directives in the litigation hold letter were followed. To do this, DART

obtained a “snapshot” of the emails to and from the Verizon[dot]net account in their native PST format from the Borough’s fileserver. The data on the fileserver was accessed remotely by DART through our privileges as the network administrator. The “snapshot” of those files have been maintained by DART on its server located in its office.

9. The Wallington[dot]org email account, like many others with that web address used by Borough officials and employees to conduct Borough business, was created by a web design company that pre-dates DART’s affiliation with the Borough.

10. The platform for that email system is Google’s GSUITE. DART was given administrative oversight to the GSUITE based system sometime in 2017. At that time, the Borough was using a free version of the GSUITE that lacked certain functions including searchable email archive.

11. DART upgraded the system late in 2018. As a result of this upgrade, Google took a snapshot of each mailbox as of the upgrade date and compiled them into an archive. Since the date of the upgrade all emails sent and received are automatically copied to the archive.

12. In July 2020, DART was contacted by Matt Gilson, Esq. and asked to provide the Borough’s emails to and from Baginski in the two email accounts.

13. The Wallingtonnj[dot]org emails were extracted from the archive in the GSUITE Vault and provided to counsel.

14. The snapshot of the Verizon[dot]net emails obtained and maintained as described above, were provided as well.

15. On or about July 28, 2020, I was contacted by Leonard E. Seaman, Esq., regarding this matter and provided him with information generally consistent with that set forth above.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.


Douglas Neumetzger

DATED: 11/1/2020